

Representative Karianne Lisonbee proposes the following substitute bill:

HEALTH CARE FACILITY BACKGROUND CHECK AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill concerns health care facility background checks.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires fingerprint background checks for certain individuals who will have direct access to patients in certain health care facilities; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-2-238, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-240, as renumbered and amended by Laws of Utah 2023, Chapter 305

Be it enacted by the Legislature of the state of Utah:



26 Section 1. Section 26B-2-238 is amended to read:

27 **26B-2-238. Definitions for Sections 26B-2-238 through 26B-2-241.**

28 As used in this section and Sections 26B-2-239, 26B-2-240, and 26B-2-241:

29 (1) "Clearance" means approval by the department under Section 26B-2-239 for an
30 individual to have direct patient access.

31 (2) "Covered body" means a covered provider, covered contractor, or covered
32 employer.

33 (3) "Covered contractor" means a person that supplies covered individuals, by contract,
34 to a covered employer or covered provider.

35 (4) "Covered employer" means an individual who:

36 (a) engages a covered individual to provide services in a private residence to:

37 (i) an aged individual, as defined by department rule; or

38 (ii) a disabled individual, as defined by department rule;

39 (b) is not a covered provider; and

40 (c) is not a licensed health care facility within the state.

41 (5) "Covered individual":

42 (a) means an individual:

43 (i) whom a covered body engages; and

44 (ii) who may have direct patient access;

45 (b) includes:

46 (i) a nursing assistant, as defined by department rule;

47 (ii) a personal care aide, as defined by department rule;

48 (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter
49 31b, Nurse Practice Act;

50 (iv) a provider of medical, therapeutic, or social services, including a provider of
51 laboratory and radiology services;

52 (v) an executive;

53 (vi) administrative staff, including a manager or other administrator;

54 (vii) dietary and food service staff;

55 (viii) housekeeping and maintenance staff; and

56 (ix) any other individual, as defined by department rule, who has direct patient access;

57 and

58 (c) does not include a student, as defined by department rule, directly supervised by a
59 member of the staff of the covered body or the student's instructor.

60 (6) "Covered provider" means:

- 61 (a) an end stage renal disease facility;
- 62 (b) a long-term care hospital;
- 63 (c) a nursing care facility;
- 64 (d) a small health care facility;
- 65 (e) an assisted living facility;
- 66 (f) a hospice;
- 67 (g) a home health agency; or
- 68 (h) a personal care agency.

69 (7) "Direct patient access" means for an individual to be in a position where the
70 individual could, in relation to a patient or resident of the covered body who engages the
71 individual:

- 72 (a) cause physical or mental harm;
 - 73 (b) commit theft; or
 - 74 (c) view medical or financial records.
- 75 (8) "Engage" means to obtain one's services:
- 76 (a) by employment;
 - 77 (b) by contract;
 - 78 (c) as a volunteer; or
 - 79 (d) by other arrangement.

80 (9) "Long-term care hospital":

81 (a) means a hospital that is certified to provide long-term care services under the
82 provisions of 42 U.S.C. Sec. 1395tt; and

83 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec.
84 1395i-4(c)(2).

85 (10) "Patient" means an individual who receives health care services from one of the
86 following covered providers:

87 (a) an end stage renal disease facility;

- 88 (b) a long-term care hospital;
- 89 (c) a hospice;
- 90 (d) a home health agency; or
- 91 (e) a personal care agency.

92 (11) "Personal care agency" means a health care facility defined by department rule.

93 (12) "Rap back system" means a system that enables authorized entities to receive
94 ongoing status notifications of any criminal history reported on individuals who are registered
95 in the system.

96 [~~(12)~~] (13) "Resident" means an individual who receives health care services from one
97 of the following covered providers:

- 98 (a) a nursing care facility;
- 99 (b) a small health care facility;
- 100 (c) an assisted living facility; or
- 101 (d) a hospice that provides living quarters as part of its services.

102 [~~(13)~~] (14) "Residential setting" means a place provided by a covered provider:

- 103 (a) for residents to live as part of the services provided by the covered provider; and
- 104 (b) where an individual who is not a resident also lives.

105 [~~(14)~~] (15) "Volunteer" means an individual, as defined by department rule, who
106 provides services without pay or other compensation.

107 Section 2. Section **26B-2-240** is amended to read:

108 **26B-2-240. Department authorized to grant, deny, or revoke clearance --**
109 **Department may limit direct patient access -- Clearance.**

110 (1) The definitions in Section **26B-2-238** apply to this section.

111 (2) (a) As provided in this section, the department may grant, deny, or revoke clearance
112 for an individual, including a covered individual.

113 (b) The department may limit the circumstances under which a covered individual
114 granted clearance may have direct patient access, based on the relationship factors under
115 Subsection (4) and other mitigating factors related to patient and resident protection.

116 (c) The department shall determine whether to grant clearance for each applicant for
117 whom it receives:

- 118 (i) the personal identification information specified by the department under

119 Subsection (4)(b); and

120 (ii) any fees established by the department under Subsection (9).

121 (d) The department shall:

122 (i) establish a procedure for obtaining and evaluating relevant information concerning
123 covered individuals, including fingerprinting the applicant and submitting the prints to the
124 Criminal Investigations and Technical Services Division of the Department of Public Safety for
125 checking against applicable state, regional, and national criminal records files[-]; and

126 (ii) require that a finding of clearance include a fingerprint-based criminal history
127 background check in the databases described under Subsection (3)(a), including the inclusion
128 of the individual's fingerprints in a rap back system.

129 (3) The department may review the following sources to determine whether an
130 individual should be granted or retain clearance, which may include:

131 (a) Department of Public Safety arrest, conviction, and disposition records described in
132 Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
133 information in state, regional, and national records files;

134 (b) juvenile court arrest, adjudication, and disposition records, as allowed under
135 Section 78A-6-209;

136 (c) federal criminal background databases available to the state;

137 (d) the Division of Child and Family Services Licensing Information System described
138 in Section 80-2-1002;

139 (e) child abuse or neglect findings described in Section 80-3-404;

140 (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or
141 exploitation database described in Section 26B-6-210;

142 (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

143 (h) licensing and certification records of individuals licensed or certified by the
144 Division of Professional Licensing under Title 58, Occupations and Professions; and

145 (i) the List of Excluded Individuals and Entities database maintained by the United
146 States Department of Health and Human Services' Office of Inspector General.

147 (4) The department shall adopt rules that:

148 (a) specify the criteria the department will use to determine whether an individual is
149 granted or retains clearance:

- 150 (i) based on an initial evaluation and ongoing review of information under Subsection
151 (3); and
- 152 (ii) including consideration of the relationship the following may have to patient and
153 resident protection:
- 154 (A) warrants for arrest;
 - 155 (B) arrests;
 - 156 (C) convictions, including pleas in abeyance;
 - 157 (D) pending diversion agreements;
 - 158 (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over
159 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance
160 or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old;
161 and
 - 162 (F) any other findings under Subsection (3); and
- 163 (b) specify the personal identification information that must be submitted by an
164 individual or covered body with an application for clearance, including:
- 165 (i) the applicant's Social Security number; and
 - 166 (ii) fingerprints.
- 167 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed
168 in another state according to the closest matching crime under Utah law, regardless of how the
169 crime is classified in the state where the crime was committed.
- 170 (6) The Department of Public Safety, the Administrative Office of the Courts, the
171 Division of Professional Licensing, and any other state agency or political subdivision of the
172 state:
- 173 (a) shall allow the department to review the information the department may review
174 under Subsection (3); and
 - 175 (b) except for the Department of Public Safety, may not charge the department for
176 access to the information.
- 177 (7) The department shall adopt measures to protect the security of the information it
178 reviews under Subsection (3) and strictly limit access to the information to department
179 employees responsible for processing an application for clearance.
- 180 (8) The department may disclose personal identification information specified under

181 Subsection (4)(b) to other divisions and offices within the department to verify that the subject
182 of the information is not identified as a perpetrator or offender in the information sources
183 described in Subsections (3)(d) through (f).

184 (9) The department may establish fees, in accordance with Section 63J-1-504, for an
185 application for clearance, which may include:

186 (a) the cost of obtaining and reviewing information under Subsection (3);

187 (b) a portion of the cost of creating and maintaining the Direct Access Clearance
188 System database under Section 26B-2-241; and

189 (c) other department costs related to the processing of the application and the ongoing
190 review of information pursuant to Subsection (4)(a) to determine whether clearance should be
191 retained.

192 Section 3. **Effective date.**

193 This bill takes effect on May 1, 2024.